

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERNEST CALVINO, JR.,

Plaintiff,

-against-

WILLIE CEVALLOZ; JOEL CEVALLOZ,

Defendants.

ERNEST CALVINO, JR.,

Plaintiff,

-against-

BILL MILLER; TOM RAY; AUDREA H.

Defendants.

ERNEST CALVINO, JR.,

Plaintiff,

-against-

JOSE D. BAEZ; JOSE D. BAEZ N.,

Defendants.

1:19-CV-11911 (CM)

1:19-CV-11952 (CM)

1:19-CV-11955 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff filed these actions *pro se*. By orders dated January 6, 2020, the Court granted Plaintiff's requests to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). For the reasons set forth below, the Court dismisses the complaints.

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). While the law mandates dismissal on any of these grounds, the

Court is obliged to construe pro se pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989), abrogated on other grounds by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *see also Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (holding that “finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible”); *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (“[A]n action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless . . . ; or (2) the claim is based on an indisputably meritless legal theory.”) (internal quotation marks and citation omitted).

BACKGROUND

Plaintiff Ernest Calvino, Jr. has filed more than two dozen complaints within the past month, many of which have already been dismissed as frivolous. *See, e.g., Calvino v. Jones*, ECF 1:19-CV-11601, 2 (S.D.N.Y. Dec. 23, 2019); *Calvino v. C.*, ECF 1:19-CV-11610, 2 (S.D.N.Y. Dec. 23, 2019); *Calvino v. Internal Affe et al.*, ECF 1:19-CV-11611, 2 (S.D.N.Y. Dec. 23, 2019).

In Plaintiff’s complaint under docket number 1:19-CV-11911, 2, Plaintiff invokes the Court’s federal question jurisdiction, and sues two private individuals (Willie and Joel Cevalloz) for “[e]xtortion, threat, illegal spying, harassment, computer threat[s].” Plaintiff makes the following allegations:

Th[ese] two people are an[ony]mously spying on m[e]. They had threat[ened] me many time[s]. They had lie[d] to me. They try to in[timidate me] electroni[cally] on a[n] audio device. At some moment during the day they say th[ese] two names and with them there [are] probably other[s] doing the same thing.

(*Id.* at 5.)

In Plaintiff's complaint under docket number 1:19-CV-11952, 2, Plaintiff sues three private individuals. He alleges the following:

Th[ese] Defendant[s] claim they are helping me. [A]fter I dislike the idea about th[eir] help Audrea was talking about an old problem and it seem[ed] like they were trying to obtain[] information to ac[c]use me with fa[lse] statements. Later she was trying [to accuse[me [of] money la[ndering]." It seem[s] like she was trying to d[e]fame[] [me] to scare me and later falsely ac[c]use me with the power of her job position and he[r] experience.

(*Id.* at 5.)

Plaintiff indicates that he suffered "damage to [his] person[al] image, stress, lost meals, institutional neglect, lost wages [and] emotional damage," and he seeks the "return of [his] property[] and val[uables]." (*Id.* at 5-6.)

In Plaintiff's complaint under docket number 1:19-CV-11955, Plaintiff sues two private individuals (Jose D. Baez and "Jose D. Baez N"). Plaintiff alleges that Defendants engaged in the following acts that harmed him: "Claim [for] support, lack to transfer, return of valu[a]bles, property[] and other." (*Id.* at 5.) Plaintiff indicates that he was injured from "los[s] of wages, stress, misleading the tru[th.]" (*Id.* at 6.)

DISCUSSION

Even when read with the "special solicitude" due *pro se* pleadings, *Triestman*, 470 F.3d at 474-75, Plaintiff's claims rise to the level of the irrational, and there is no legal theory on which he can rely. *See Denton*, 504 U.S. at 33; *Livingston*, 141 F.3d at 437.

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaints cannot be cured with an amendment, the Court

declines to grant Plaintiff leave to amend and dismisses these three actions as frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i).

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, and note service on the docket.

Plaintiff's complaints are dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: January 10, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge